IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1358 OF 2000

Kum.Smita Appasaheb Indulkar,
Now Mrs.Smita Madukar Tewalekar
presently residing at Plot No.79,
Salunkhe Nagar, Kolhapur. Petitioner

vs.

1. State of Mahyarashtra
(through its Deputy Director,
Dept. of Education (Primary),
Kolhapur.

2. The Chairman/Secretary,
Rajashri Shahu Shikshan Sanstha,
Salukhe Nagar, Kolhapur.

3. The Head Master, Shri Shivshakti
Vidyalaya, Salukhe Nagar,
Kolhapur.

4. The Administrative Officer,
Kolhapur Municipal Corporation,
Primary School Board, Shivaji
Market, Kolhapur.

5. The Member,
School Tribunal, Kolhapur Region,
Kolhapur. Respondents

Mr.Sachin Manale i/b. Mr.S.S.Pakale for the petitioner.

Mr.R.M.Patne, A.G.P. for the respondent no.1.

Mr..N.V.Bandiwadekar for the respondent no.2.

Mr.S.M.Railkar for the respondent no.4.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 3rd May 2005

ORAL JUDGMENT (Per R.M.Lodha,J.)

Heard Mr.Sachin Manale, the learned counsel for the petitioner, Mr.N.V.Bandiwadekar, the learned counsel for

the respondent no.2 and Mr.S.M.Railkar, the learned counsel for the respondent no.4.

2. During the course of arguments, the learned counsel for the petitioner pressed for direction to respondents 2 to 4 to release salary of the petitioner for the period from 1.1.1997 to 9.2.1998. The learned counsel for the petitioner submitted that by virtue of the interim order passed by this Court on 20th July 2001 the petitioner has been paid salary as untrained teacher for the period from 1.4.1998 until termination of her service.

3. Having considered the submission of the learned counsel for the petitioner and the available material, we are of the view that no relief deserves to be granted to the petitioner with regard to her claim of salary for the period from 1.1.1997 to 9.2.1998. It is so because the service of the petitioner was terminated by order dated 26th December 1996 with effect from 1.1.1997. Though her service came to be terminated with effect from 1.1.1997, it appears that she approached the School Tribunal on 9.2.1998 setting up the case that her service came to be terminated orally with effect from 7.2.1998. From the perusal of the memo of appeal preferred by the petitioner before the School Tribunal on 9.2.1998 it is clear that for the period from

30.04.1997 until 01.01.1998 she was not in employment as Assistant Teacher. The averment made in the appeal filed before the School Tribunal on 9.2.1998 reads thus:

> "She remained in continue service in the said school till 30.4.1997 and thereafter she was reappointed as Assistant Teacher in the said school from 2.1.1998 as Additional Teacher." "

4. The aforesaid averment itself would show that her claim for salary from 1.1.1997 until 31.12.1997 is wholly misconceived and misplaced. As regards the aspect whether the petitioner was in service upto 30.4.1997, suffice it to say that this aspect is seriously disputed since the petitioner's services came to be terminated on 1.1.1997. Such disputed claim cannot be gone into in extraordinary jurisdiction under Article 226 of the Constitution of India.

5. Moreover, it appears that the petitioner filed writ petition being writ petition no.5828/1999 before this Court. The said writ petition was withdrawn, of course with liberty to file fresh writ petition. In reply to that writ petition, the present respondents 2 and 3 had set up the case thus:

> "I say that however the petitioner has not worked in the post from 1.1.1997 to 30.3.1998. Therefore, she is not entitled to claim any salary for the said period by applying the principle of "no work no pay". Even otherwise, admittedly the services of petitioner were terminated on 1.1.1997 whereas

> she has filed the appeal belatedly before the School Tribunal on 9.2.98, together with application for condonation of delay. Therefore, at least for the period 1.1.97 to 9.2.98 the petitioner is not entitled to salary."

6. In view of the aforesaid stand of the respondents 2 and 3, we are of the view that the petitioner is not entitled to salary even of untrained teacher for the period from 1.1.97 to 7.2.98.

7. Writ petition is disposed of accordingly.

8. We clarify that no recovery shall be made from the petitioner of the amount paid to her pursuant to the interim order dated 20th July 2001.

9. No costs.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)